

FILE COPY

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION  
FOR A LICENSE TO PRACTICE  
AS A REAL ESTATE SALESPERSON OF

ROBERT M. ELLESTAD,  
APPLICANT.

FINAL DECISION  
AND ORDER  
LS9501091REB

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 19<sup>th</sup> day of May, 1995.

Marlene A. Cunniff

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF THE APPLICATION  
FOR A LICENSE TO PRACTICE  
AS A REAL ESTATE SALESPERSON OF

LS9501091REB

ROBERT M. ELLESTAD

Applicant

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PROPOSED DECISION

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The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Wisconsin Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Robert M. Ellestad  
1512 Furseth Road  
Stoughton, WI 53589

State of Wisconsin Department of Regulation & Licensing  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53703

A hearing was conducted in the above-captioned matter on February 9, 1995. The Division of Enforcement appeared by Attorney Gerald M. Scanlan. Mr. Ellestad appeared in person and by Attorney Robert A. Christensen. A transcript of the proceedings was received on March 27, 1995.

Based on the entire record in this matter, the administrative law judge recommends that the Department of Regulation & Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

## FINDINGS OF FACT

1. Robert M. Ellestad (applicant) filed his application for a license to practice as a real estate salesperson by his application dated July 11, 1994. Applicant provided a copy of a Certificate of Completion of Educational Requirements on March 23, 1994, and he passed the salespersons' examination on June 18, 1994.

2. On his application, applicant answered "YES" to the question whether he had ever been convicted of a misdemeanor or a felony; and he answered "YES" to the question whether at the time of application he was incarcerated, on probation or on parole for a conviction.

3. Applicant has a history of the following criminal convictions:

- (a) February 9, 1976; Disorderly Conduct; Fined.
- (b) September 11, 1979; Disorderly Conduct; Fined.
- (c) January 17, 1988; Battery; Fined.
- (d) July 29, 1991; Threats to injure or accuse of crime, in violation of sec. 943.30(1), Stats., and Penalties; use of a dangerous weapon, in violation of sec. 939.63(1)(a), Stats. Sentenced to prison for two years with 159 days credit. Paroled on December 30, 1991. Parole supervision discharged on February 20, 1993, at which time three year consecutive probation sentence started.
- (e) May 23, 1994; Retail theft; Fleeing an officer; Resisting an officer. Twelve months probation concurrent with current probation. Detained at the Dane County Jail from March 16, 1994, to May 2, 1994.

4. Applicant currently remains on probation and probation is scheduled to continue until approximately February, 1996. There is no evidence of problems with Mr. Ellestad's compliance with the conditions of his probation since his release from the Dane County Jail on May 2, 1994.

5. The circumstances of criminal convictions for disorderly conduct, battery, threats to injure or accuse of crime, committing a crime while in possession of a dangerous weapon, retail theft, and fleeing an officer are substantially related to the circumstances of the practice of a real estate salesperson.

## CONCLUSIONS OF LAW

1. The Department of Regulation & Licensing has jurisdiction in this matter pursuant to sec. 452.05, Stats.

2. The circumstances of applicant's convictions for disorderly conduct, battery, threats to injure or accuse of crime, committing a crime while in possession of a

dangerous weapon, retail theft, and fleeing an officer are substantially related to the circumstances of the practice of a real estate salesperson within the meaning of sec. 111.335(1)(c)1., Stats.

3. Conviction of crimes the circumstances of which substantially relate to the circumstances of the practice of a real estate salesperson constitutes a basis for denial of a license under sec. 452.05, Stats.

### ORDER

NOW, THEREFORE, IT IS ORDERED that the order of the department dated October 13, 1994, denying the application of Robert M. Ellestad for a license to practice as a salesperson, is hereby affirmed, and the license is therefore denied.

IT IS FURTHER ORDERED that Robert M. Ellestad may, six months following his release from probation, petition for reconsideration of his application for a license to practice as a real estate salesperson in Wisconsin. If applicant has not, within the period of time between the last conviction set forth herein and the time of his petition for reconsideration, been arrested or convicted for any charge the circumstances of which substantially relate to the circumstances of the practice of a real estate salesperson, then notwithstanding the examination requirement of sec. RL 12.03, Code, the application shall be granted.

### OPINION

The principal issue raised at hearing was whether the circumstances of Mr. Ellestad's various convictions substantially relate to the circumstances of the practice of a real estate salesperson. The Wisconsin Supreme Court recently defined the criteria for establishing substantial relationship in *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 (1987). Defendant in that case had been convicted of homicide by reckless conduct and of neglect of nursing home residents. The court found that in his capacity as nursing home administrator, the defendant had failed to provide for necessary staffing and supplies to avoid patient harm. At the time of conviction, defendant was employed by the County of Milwaukee as a Crisis Intervention Specialist, and he was discharged from employment as a result of the conviction. The Supreme Court overturned the decisions of the Milwaukee Circuit Court and the Court of Appeals by finding that the circumstances of the conviction were substantially related to the circumstances of employment as a crisis intervention specialist.

Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details . . . It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. 139 Wis. 2d at 824.

Persons engaged in real estate transactions with real estate brokers and salespersons have the right to expect those licensees to deal with them honestly and ethically, and to conduct themselves in a manner so as to elicit the client's trust in and reliance upon the licensee's integrity and reliability. Moreover, the practice of real estate involves the limited practice of law, and one holding a broker or salesperson license must therefore demonstrate a respect for the law. The crimes of which Mr. Ellestad was convicted, involving disorderly conduct, battery, threats to injure or accuse while possessing a firearm, and retail theft, emphatically do not demonstrate character traits that would promote the public's trust in his integrity and reliability or instill belief in his honesty and ethical behavior. There can therefore be no question but that the circumstances of Mr. Ellestad's convictions substantially relate to the circumstances of the practice of a real estate salesperson.

Nor may it be said that Mr. Ellestad has demonstrated his rehabilitation to an extent that would justify the grant of a license at this time. His convictions range over a considerable period of time, and his most recent conviction, for retail theft, occurred while he was still on probation from the previous conviction. Accordingly, it might seem appropriate to merely affirm the denial of license and permit Mr. Ellestad to reapply at a time when he is in a position to demonstrate his reformation. There are additional factors here, however, which militate for providing Mr. Ellestad with the opportunity to become licensed within a defined period of time. For while Mr. Ellestad is not able to establish that his rehabilitation is complete at this time, there are mitigating circumstances relating to his past conduct and his attempts to reform his life. The testimony of Robert M. Cook, a psychiatric social worker with the Vet Center in Madison, which is associated with the federal Department of Veterans' Affairs, is instructive in that regard.

Mr. Cook, who holds master's degrees in counseling psych and in social work, and who is himself a Vietnam veteran, testified that he began working with Mr. Ellestad on a regular basis approximately one year prior to the hearing in this matter. Mr. Cook recounted that Mr. Ellestad had served in Vietnam in 1968 and 1969 as a combat marine, and that the death of his mother during his tour of duty had apparently had a profound affect on him. Since that time, Mr. Ellestad was described as having recurring bouts of depression. When asked to describe his view of the basis for Mr. Ellestad's "scrapes with the law" over the years, Mr. Cook responded,

... [S]ome of the early problems that he encountered, and I don't know all of the rap sheet, but I saw some of the disorderly kinds, is not uncommon behaviors that Vietnam veterans, particularly those that served in combat, coming back encountered with a -- some anger and resentment against the system, some authority issues, and got into that kind of issues -- particularly in the '70s. We saw and have seen a lot of veterans who experienced that kind of criminal behavior, whatever you want to call it. (tr., p. 40)

Mr. Cook testified that he had encouraged Mr. Ellestad to apply for a real estate license and encouraged him to appeal the subsequent denial. He felt that the effort would have a rehabilitative effect and that licensure would provide a career field in which Mr. Ellestad could do well:

. . . I said on the basis of the turn down on the basis of character, I thought [he] should appeal this. Because, in my opinion, I've dealt with him for a year, and I've been in and out of the Wisconsin prison systems for 15 years dealing with a lot of characterological veterans, people with strong anti-social personality disorders, and I didn't find Mr. Ellestad having an anti-social personality disorder of the type that would be, you know, I've got to get someone before they get me.

. . . I'm in the rehab business and it seems like the direction that we are going in our society is to not give anybody a chance any longer and that probably explains why our recidivism rate at corrections level and why we're building more prisons . . . . But at least from my opinion I strongly suggested that he make this appeal and go at it because I thought he deserved at least a provisional opportunity. (tr. pp. 44-45)

Mr. Ellestad's probation officer, Steve Waldron, wrote a letter of support for Mr. Ellestad's application, which was admitted as Exhibit 14. After recounting Mr. Ellestad's previous two arrests while on probation, Mr. Waldron writes,

Since being released from the Dane County Jail in May of [1994], Robert has made great strides in his probation efforts. He is in contact with the Vet Center in Madison and goes there on a weekly basis. Additionally, he is paying money towards his court obligations that he was ordered to pay. He has also found employment working for his brother. He expressed an interest in real estate school and did pass the test. To my knowledge there are no pending charges on Mr. Ellestad.

In his closing argument, Mr. Scanlan summarized as follows:

The state's exhibits show that Mr. Ellestad has certainly had his fair share of brushes with the law in the past. I personally hope that he overcomes these problems and moves on to bigger and better things. And as a former marine myself, and Vietnam veteran, I can somewhat empathize with his experiences in Vietnam. However, the issue here of course is whether or not at this point in time Mr. Ellestad should be licensed as a real estate salesperson. And the state contends that at this time he certainly should not be licensed as a real estate salesperson for the reasons Mr. Hansen indicated in his testimony. (tr., p. 48)

Mr. Hansen's testimony does in fact satisfactorily establish the conclusion that Mr. Ellestad should not be licensed at the present time. But if not now, when? Mr. Hansen's testimony also expresses his opinion in that regard; an opinion shared by the undersigned.

Q. (by Mr. Christensen) Does this mean that Mr. Ellestad could never be licensed?

A. No.

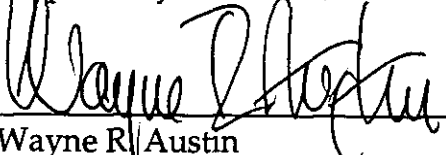
Q. What would it take, I mean in your view -- and I'm not asking for advice necessarily, but what would it take, in your view, for him to be able to be licensed?

A. I think we're getting down to, you know, evidence of sufficient -- sufficient evidence of rehabilitation. We have to -- Mr. Ellestad has to show that he is able to comply with the law and, you know, finish off his period of probation to the satisfaction of his probation officer. (tr., p. 94)

It seems reasonable to conclude that if Mr. Ellestad is able to get through the next year and one-half without further "brushes with the law," thus completing a period of almost two and one-half years without any arrest or conviction, then considerations of public health, welfare and safety should not create any impediment to Mr. Ellestad's being granted a license without further application or examination. It is not necessary to conclude that Mr. Ellestad's experiences as a marine and as a returning combat veteran during the Vietnam era justify his conduct in the years that followed, in order to decide that he should at least be given the opportunity to affirmatively demonstrate, within established parameters, that such conduct is behind him.

Dated at Madison, Wisconsin this 2nd day of May, 1995.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Wayne R. Austin", is written over a horizontal line.

Wayne R. Austin  
Administrative Law Judge

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

MAY 19, 1995.

### **1. REHEARING**

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### **2. JUDICIAL REVIEW.**

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)